



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 174912

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Pursuant to petition filed June 10, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Tuesday, July 26, 2016 at 09:15 AM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Office of the Inspector General  
Department of Health Services - OIG  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
██████████  
██████████

█

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Mississippi who received FS benefits in Milwaukee County from June 1, 2012 through May 1, 2015.
2. On or about June 18, 2012, the respondent applied for Wisconsin FS benefits. She reported residency in Wisconsin with an address on ██████████ Milwaukee. She reported a household size of one and no income.

3. On June 19, 2012, the agency issued a Notice of Decision to the respondent informing her that her application was approved and she would receive FS benefits of \$200/month effective July 1, 2012.
4. On or about July 11, 2013, the respondent completed a FS renewal. She reported Wisconsin residency with an address on [REDACTED] Milwaukee. She reported a household size of one and no income.
5. On July 12, 2013, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$135 for July, 2013 and \$200/month effective August 1, 2013.
6. On October 7, 2013, the agency issued a Notice of Decision to the respondent at her last-reported address on [REDACTED] Milwaukee. The mail was returned to the agency as undeliverable on November 7, 2013 with no forwarding address.
7. On November 26, 2013, the respondent submitted a Six Month Report Form (SMRF) to the agency. She reported that she had not moved from the address on [REDACTED] Milwaukee. She reported no other changes.
8. On or about June 4, 2014, the respondent completed a FS renewal. She reported Wisconsin residency with an address on [REDACTED] Milwaukee. She reported a household size of one and no income.
9. On July 14, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$189/month effective July 1, 2014.
10. On or about December 26, 2014, the respondent completed a FS renewal. She reported Wisconsin residency with an address on [REDACTED] Milwaukee. She reported a household size of one and no income.
11. On January 5, 2015, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$194/month effective January 1, 2015.
12. In March, 2015, the agency received an alert regarding EBT usage discrepancies. On March 31, 2015, the agency issued a Notice of Proof Needed to the Petitioner at her last-reported address requesting verification of residency. The due date for the information was April 9, 2015. No verification was provided by the respondent.
13. On May 11, 2015, the respondent contacted the agency regarding her FS benefits. The agency informed her of the usage discrepancies and informed respondent that she was required to come to the agency to provide residency verification.
14. On May 14, 2015, the respondent contacted the agency to report that she resides in Mississippi.
15. From June, 2012 – April, 2013, respondent's Wisconsin QUEST card was used exclusively in the state of Wisconsin. From May, 2013 – September, 2013, respondent's Wisconsin QUEST card was used exclusively in the state of Mississippi. From October, 2013 – December, 2013, the respondent's Wisconsin QUEST card was used exclusively in Wisconsin. For all of 2014, the respondent's Wisconsin QUEST card was used exclusively in Mississippi with the exception of one transaction in Wisconsin in December, 2014.
16. On June 23, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent failed to report moving from Wisconsin and continued to receive FS benefits.
17. The respondent failed to appear for the scheduled July 26, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all

the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. In July, 2013, the respondent completed a renewal for Wisconsin FS benefits. At that time, the evidence demonstrates that she had been in Mississippi for two months. She did not report to the Wisconsin agency that she was in Mississippi temporarily or that she had moved there. She remained in Mississippi for two more months. The evidence establishes that she returned to Wisconsin for the remainder of 2013 but that she moved permanently to Mississippi in January, 2014. She completed two renewals in 2014 and never reported that she was no longer residing in Wisconsin. She contacted the agency in May, 2015 to inquire about benefits and only then reported her Mississippi residence when it became clear that the agency knew she was no longer in Wisconsin. Based on the evidence presented, I conclude that the respondent committed an intentional program violation when she repeatedly reported Wisconsin residency and used Wisconsin FS benefits when she was a resident of Mississippi. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that an individual must reside in Wisconsin to receive Wisconsin FS benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE**, it is

### **ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

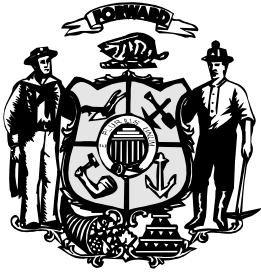
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of August, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

c: Office of the Inspector General - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
[REDACTED] - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 31, 2016.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]@wisconsin.gov